

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

STEVEN O. CUPP,

Plaintiff,

v.

Civil Action No. 2:08cv60

**DUANE BROWN, CECIL D. NICHOLS,
JOYCE FRANCIS, DEBRA RANKIN,
KUMA J. DEBOO, K.M. WHITE and
HARRELL WATTS,**

Defendants.

ORDER

It will be recalled that on December 1, 2008, Magistrate Judge John S. Kaull filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Plaintiff filed his objections on December 11, 2008.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his civil rights Complaint, wherein Plaintiff seeks damages for losses allegedly incurred from the confiscation of art books, magazines and calendars, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Upon review of the Plaintiff's objections, the Court finds that the Plaintiff has not raised any issues that were not already thoroughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Kaul's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Plaintiff's claims regarding the return of his art books shall be, and the same hereby are, **DISMISSED without prejudice** for failure to exhaust. It is further

ORDERED that Plaintiff's claims against Defendants Nichols, Francis, Rankin, Deboo, White and Watts, related to the confiscation of the Plaintiff's art books, magazines and calendars upon his arrival at FCI-Gilmer, shall be, and the same hereby are, **DISMISSED with prejudice**. It is further

ORDERED that Plaintiff's claims against defendant Brown, related to the confiscation of the Plaintiff's art books, magazines and calendars upon his arrival at FCI-Gilmer, shall be, and the same hereby are, **DISMISSED without prejudice** for the failure to state a claim. It is further

ORDERED that the Plaintiff's civil rights complaint be, and the same hereby is, **DISMISSED** and that this civil action be **STRICKEN** from the docket of the Court. It is further

ORDERED that the Clerk shall enter judgment for the Defendants. It is further

ORDERED that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at

the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

ENTER: November 2, 2009

/s/ Robert E. Maxwell
United States District Judge